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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.854 OF 2002**

Ashok Mahadeo Koli
r/o. Yashwant Colony
Shivanakwadi, Tal.:Shirol
Dist.:Kolhapur, at present
in Kolhapur Prison ... Appellant

V/s.

The State of Maharashtra ... Respondent

Mr.D.V. Sutar with K.C.Shirguppe for Appellant
Mr.P.S. Hingorani, APP, for Respondent

CORAM: **V.G. PALSHIKAR &**
**SMT.NISHITA MHATRE, JJ.**

DATED: **OCTOBER 17, 2006**

**ORAL JUDGMENT (PER SMT.MHATRE, J.):**

. The accused has challenged his conviction under section 302 of the Indian Penal Code and sentence to life imprisonment. The allegation against the accused is that he killed his wife by throttling her on 5.5.2001. The accused was arrested soon after the body of the deceased was found and was tried before the Sessions Court in Sessions Case No.169 of 2001. The prosecution has relied on 12 witnesses to substantiate its case before the trial Court. The prosecution has alleged that the accused who was a labourer was married to the deceased and had a six year old son. His addiction to alcohol left him with insufficient funds to run the house. He often sent Vaishali, his wife and son back to her parental home. Vaishali’s father used to

supply provisions in order to help the accused make two ends meet. According to the prosecution, the accused often quarrelled with his wife which provoked the father of Vaishali to complain to the father of the accused about his son's conduct. The father of the accused provided him a room near his house at Shivanakwadi. Vaishali and their son Prashant started residing in the new house alongwith the accused. However, as old habits die hard, the accused went back to his earlier ways. Vaishali and her son returned to her father's house and continued to stay there. On 30.4.2001, the accused brought Vaishali from her father's house to their matrimonial home, after assuring her father that he would treat her properly in future. Their son Prashant continued to reside with the maternal grandfather. The case of the prosecution is that on 5.5.2001 between 3 and 4 am Vaishali was found dead. Vaishali's body was found by the mother of the accused who stayed close to them. She woke up her husband and other son Deepak. Deepak then sent a message to Vaishali's father about her death. Vaishali's father and other relatives came to her house at about 8 in the morning. According to the prosecution, the accused on being questioned by Vaishali's father informed him that he had throttled Vaishali since she had rebuffed his sexual advances.

2. The prosecution in order to prove its case against the accused, examined his mother as PW4. This

witness has turned hostile. PW3, the brother of the accused has also turned hostile. However, both these witnesses have spoken about the strained relations between Vaishali and the accused. PW4 has in fact stated that she saw the accused outside his house in the morning between 4.30 and 5 am on 5.5.2001. She questioned the accused of the whereabouts of Vaishali. As he did not answer she followed him into his house and found Vaishali dead. However, the evidence of these witnesses is not very helpful to the prosecution, both the witnesses having turned hostile.

3. Panch witness, PW1, has spoken about the extra judicial confession of the accused to her. This witness has stated in detail about the manner in which the dead body of the victim was found. A scarf was tied around the neck of the victim. The witness was asked to untie the knot of the scarf and it was noticed that there were black marks around the neck. This witness has been crossexamined in great detail. However, her credibility has not been shaken.

4. The body was photographed by PW2 and was then sent for postmortem examination to PW9. The medical officer has described the injuries sustained by the victim such as abrasions and contusions. The anterior aspect of the neck was swollen. The internal injuries which the victim had sustained were also described by

this witness. The hyoid bone was found to have a depressed fracture. According to this witness, the cause of death was asphyxia due to throttling. The Doctor has described what would happen to a person who is being throttled. Fine abrasions appear on the tongue, blood clots and abrasions appear on the external and internal ears and the blood vessels can clot. All these injuries were found on the victim when the postmortem examination was conducted. The witness has stated that external injuries 6 to 15 described by him were possible due to pressure of the thumb or fingers on the neck. The witness has been crossexamined at length regarding the hyoid bone and the depressed fracture which was found in the victim. The Doctor has not agreed with the suggestion that the bone is formed only after the age of 40 years and that it could be fractured only after that age.

5. In our opinion, the panch witness PW1 has proved the inquest panchanama. This evidence is corroborated by the medical evidence on record. The victim has died because of asphyxia due to throttling. Therefore, her death is homicidal. The question would be whether it was the accused who was responsible for her death.

6. PW5, who has been examined on behalf of the prosecution is the wife of PW3. This witness has stated that she saw the accused and the deceased together in

the house when she was washing utensils at 10 pm on 4.5.2002. Therefore, according to the prosecution since the accused and the deceased were last seen together, it is the accused who was responsible for the crime. The testimony of this witness is relevant only for the fact that the accused and the deceased were last seen together.

7. The father of the victim PW7 has deposed about the harassment suffered by his daughter at the hands of the accused. He has spoken about the quarrels that the couple often had and the fact that the accused was unable to support his wife and child with his meagre earnings. This witness has stated that the victim and her son often stayed at his place. He has also spoken about the help that he rendered to the accused in order to make two ends meet. The witness has stated that when he reached the scene of offence at about 8.30 in the morning of 5.5.2001, the accused was present in the house. He found Vaishali lying dead with the scarf around her neck. According to him, the accused confessed to having throttled her because the victim rebuffed the sexual advances made by the accused. Again this witness's testimony has not been shaken in the crossexamination. There are no material omissions or discrepancies from the statement made by this witness when he lodged the complaint with the police.

8. PW8 is a friend of the father of the deceased. He has corroborated the evidence of PW7, Vaishali's father. He reached the scene of offence when he learnt of Vaishali's death. He also claims that the accused and his mother told him the motive for committing the crime. His statement was recorded on the next day by the police. PW6 and PW10 are the panch witnesses. PW10 has proved the seizure panchanama whereunder the clothes of the accused were attached. PW11 is the Investigating Officer who handed over the investigation to PW12.

9. The learned Advocate appearing for the accused had a serious objection to medical evidence on record. According to the learned advocate, the victim could not have been throttled at all as there were no marks on her neck. He submits that if pressure was to be applied on the neck there would be some abrasions around the neck. According to the learned Advocate, the medical evidence which shows that there was a depressed fracture of the hyoid bone should not be accepted as the bone forms only after the age of 40 years. Prior to that age, since the bone is not formed there could be no fracture of the hyoid bone. He submits that such a view has been accepted by the Rajasthan High Court in the case of *State of Rajasthan v/s. Mohd. Sahid,* **1994 Cri.L.J. 391**. According to the learned Advocate, the accused cannot be found guilty of an offence which is medically impossible to have occurred since the hyoid bone could

not have been fractured as the victim was only about 23 years old. If the hyoid bone was not fractured then the theory of throttling, according to the learned Advocate, cannot be accepted. Apart from this, he submits that the theory of the prosecution that the accused and the deceased were last seen together is not established. He submits PW5 had no access to the house of the accused nor could she have got a glimpse of the entrance to his house. She was washing utensils behind her own house while the house of the accused was across the open space outside the front door of her house. He places reliance on the judgment of the Supreme Court in the case of *State of Punjab v/s. Bhajan Singh & Ors.*, **AIR 1975 SC 258** to submit that circumstantial evidence in this case suffer from a number of infirmities and therefore, should not be believed. According to the learned Advocate, the complicity of the accused in this crime has not been established by the prosecution.

10. It is no doubt true that the present case is based entirely on circumstantial evidence. The prosecution has proved (i) that the accused and the deceased had been seen together last by PW5; (ii) that nobody else had access to the house of the accused; (iii) that the accused had made an extra judicial confession to PW1 and some other persons; (iv) that the mother of the accused had found the body of the victim at 4.30 in the morning in the house of the accused; (v)

that there were marks around the victim's neck which indicated that she had been throttled; and (vi) that the medical evidence established that death was caused due to asphyxia because of the depressed fracture of the hyoid bone. In our opinion, the prosecution has proved its case against the accused. They have proved the theory of last seen together. This principle coupled with the medical evidence on record and the testimony of the neighbour, PW1 and PW8 is sufficient to prove the guilt of the accused.

11. The learned advocate appearing for the accused laboriously took us through the judgment of the Rajasthan High Court in the case of *State of Rajasthan v/s. Mohd. Sahid* (supra) where the Doctor in that case had opined that the fusion of the Hyoid bone which is in six pieces in a 'U' shape occurs in a person only in the middle age. The learned advocate was at pains to point out that the victim was only in her early twenties and therefore, if there was no Hyoid bone no fracture of the bone could have occurred & the question of death by asphyxia due to throttling would not arise. This judgement does not in any manner state that the medical evidence on record in that case would apply to each and every case of throttling. It is true that the Doctor in that case had stated that the fusion of six parts of the hyoid bone takes place only after the age of 40. However, PW10 in the present case, has not agreed with

this suggestion. In any event, the submission of the learned Advocate for the accused that the Hyoid bone could not be fractured is not right. The postmortem examination notes indicate that there is a depressed fracture of the hyoid bone. This is entirely different from the fracture of the hyoid bone itself. A depressed fracture is defined in the Butterworth Medical Dictionary, Second Edition as an area of the skull driven inwards. When the postmortem notes indicate that there is a depressed fracture of the Hyoid bone, all that it would mean is due to the pressure applied on the neck, the hyoid bone which is positioned at the base of the tongue would be driven inwards, thus leading to asphyxia. The medical evidence on record sufficiently proves that the death was caused by asphyxia due to throttling. The external injuries show that the deceased had struggled during the last moments of her life.

12. In our opinion, the chain of circumstances is complete. The prosecution has proved that the deceased died a homicidal death. The complicity of the accused has also been proved. We therefore confirm the impugned judgment.

13. Appeal dismissed.